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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,395	02/22/2005	Gunter Kaupp	KAUPP1	7134
1444 7590 07/10/2007 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER ABU ALI, SHUANGYI	
			ART UNIT 1755	PAPER NUMBER
			MAIL DATE 07/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,395

Applicant(s)

KAUPP ET AL.

Examiner

Shuangyi Abu-Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

(1)

Status of Claims

Claims 1-20 remain for examination wherein claims 1, 4, 6-7 and 10 -15 are amended and claims 8-9 are canceled. Claims 21 and 22 are new.

(2)

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites "according to claim 1". Claim 1 recites aluminum pigment. Claim 12 recites copper pigment. Claim 12 is examined on the merits the copper pigment.

(3)

Claim Rejections - 35 USC § 102

The rejection of claims 1-5, 8, 16, 19 and 20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5, 931,996 to Reisser et al. general set forth in the first office action mailed on 09/28/2006 stands.

The rejection of claims 1 and 18 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,213,618 to Souma et al. as general set forth in the first office action mailed on 09/28/2006 stands.

Claim Rejections - 35 USC § 103

The rejection of claim 17 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,931,996 to Reisser et al. in view of PCT Patent No. Wo 95/14732 to Nadkarni et al. as general set forth in the first office action mailed 09/28/2006 stands.

The text of those sections of title 35 US Code not included in this action can be found in the prior Office Action.

(4)

Response to Amendment

Applicants' amendments to claims 1,6-18 and 18 over 35 U. S. C. 112 rejections, filed on 05/23/2007 are acknowledged. As such, the rejection to the claims 1,6-18 and 18 set forth in the First Office Action are withdrawn.

(5)

Response to Arguments

In general, applicants argue the purity of the pigments (aluminum, copper, bronze, gold, silver) used in the instant application. The examiner respectfully submits that with respect to the presence of the impurity such as mercury, arsenic, lead and so on, it is considered that because the instant claims recites the language "less than" in defining the amount of those components, the fact that Reisser et al. or the cited prior art do not disclose the presence of those component is seen to read upon the range instantly claimed, since the phrase "less than" is considered to include the value of zero (0). In re Mochel, 176 U. S. P. Q. 194 (CCPA 1972).

Applicant's arguments filed 05/23/2007 have been fully considered but they are not persuasive. Therefore, the grounds of rejection for claims 1-5, 8, 16-17, 19 and 20 as indicated in the first Office Action stand.

Regarding claims 1-5, 8, 16-17, 19 and 20, applicants argue that the amended claim 1 now having the limitation of the size and the purity of the aluminum pigment, therefore the Reisser et al. reference does not apply. The Examiner respectfully submits that the Reisser et al. disclose that the Stapa Metallux 2154 aluminum pigment, which having a at least 99.5% of the particles having a size of less than 25 μm , used in the composition (Example 1). As for the purity of the pigment, please see above statement.

Regarding claim 1 and 18, applicants argue that the amended claim 1 now having the limitation of the size and the purity of the aluminum pigment, therefore the Souma et al. disclosure is no longer valid for the rejection ground. The Examiner respectfully submits that Souma et al. disclose that the aluminum pigment is preferred having a size of 1- 100 μm (col. 3, lines 25-26). As for the purity of the pigment, please see above statement

(6)

Applicant's arguments with respect to claims 1, 5-7 and 10-15 over U. S. Patent No. 5,718,753 to Suzuki et al. Have been considered but are moot in view of the new ground(s) of rejection.

It is noted that claims 1, 11-13, and 15 are product-by-process claims. Eventhough product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a

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product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 77F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).

The recitation of cosmetic preparation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 5,213,618 to Souma et al.

Regarding claims 1, 7 and 10, Souma et al. disclose an aluminum pigment, which has a size in the range of 1-100 μm (col. 3, lines 25-27), having a coating of titanium oxide (abstract). The titanium oxide coating has a thickness of 40-90 nm (col. 6, lines 15). As for the purity of the pigment, please see above purity statement.

(7)

Claims 11-12, 16 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 3,389,116 to Saha et al.

Regarding claims 11 and 21, Saha et al. disclose a gold bronze pigment, which is a copper –zinc alloy with as much as 30% zinc (col. 2, line 8), having a coat of an organically modified silane (col. 1, lines 25 and 26). The pigment size is less than 44 μm (col. 3, line 28). As for the purity of the pigment, please see above purity statement

Regarding claim 16, Saha et al. disclose an aluminum pigment, which has a size of less than 44 μm (col. 3, line 28), having a coat of an organically modified silane (col. 1, lines 25 and 26). The amount of the silane is in a range of 0.01-0.05 amount of the pigment (claim 1).

Regarding claims 12 and 22, Saha et al. disclose a copper pigment (col. 2, line 8) having a coat of an organically modified silane (col. 1, lines 25 and 26). The pigment size is less than 44 μm (col. 3, line 28).

(8)

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 5,037,475 to Chida et al.

Regarding claims 13 and 14, Chida et al. disclose a metallic pigment comprising a pure metal substrate such as silver and a coating (col. 3, lines 11 and 12 and abstract). As for the purity of the pigment, please see above statement

(9)

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 3,389,105 to Bolger et al.

Regarding claim 15, Bolger et al. disclose a gold pigment coated with a fluorocarbon resin (abstract and col. 6, line 62). As for the purity of the pigment, please see above statement.

(10)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

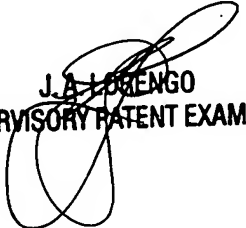
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shuangyi Abu-Ali whose telephone number is 571-272-6453. The examiner can normally be reached on Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SA


J. A. LORENGO
SUPERVISORY PATENT EXAMINER